

IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA

SHERRY LUCKERT, personal	)	
representative of the estate of	)	
TROY SAMPSON, deceased,	)	8:07CV5010
	)	
Plaintiff,	)	
	)	
vs.	)	ORDER
	)	
COUNTY OF DODGE, a Nebraska	)	
Political Subdivision, DOUG CAMPBELL, in	)	
his individual and official capacity,	)	
TIFFANY WILLMS, in her individual	)	
and official capacity, JO-EL CHILES, in his	)	
individual and official capacity, and	)	
CYNTHIA JULIAN, in her individual and	)	
official capacity,	)	
	)	
Defendants.	)	

This matter is before the court on its own motion. For reasons stated on the record at a hearing on this date, the court finds the plaintiff's motions for sanctions should be granted in part. The appropriate remedy for the defendants' failure to disclose the fact of defendant Chiles's termination is to reopen discovery and allow the plaintiff the opportunity to depose defendants Jo-El Chiles and Doug Campbell at Dodge County's expense (including expedited transcription) and to order the defendants to produce to the plaintiff any documents relevant to Chiles's termination. At this time, the court will take the plaintiff's request for an instruction that the jury may draw a negative inference from the defendants' nondisclosure under advisement.

Further, in order to clarify the court's earlier ruling on the defendants' motion in limine, the court has reviewed the Affidavit and Supplemental Affidavit of plaintiff's expert witness, Lindsay Hayes. See Filing No. 91, Attachment 2; Filing No. 133, Attachment 3.

The court finds that the substance of Hayes's testimony can be gleaned from an examination of the affidavits and it will not be necessary for the defendants to depose Mr. Hayes in order to prepare for trial. Mr. Hayes will be permitted to testify in conformity with the affidavits. Accordingly,

IT IS ORDERED that:

1. Plaintiff's motions for sanctions (Filing Nos. 163 and 166) are granted in part and taken under advisement in part.
2. Discovery is reopened for the limited purpose of the depositions of defendant Jo-El Chiles and Doug Campbell on Saturday, June 19, 2010, at 3:00 p.m. at place to be determined by the parties.
3. Defendant Dodge County shall bear the expense of the depositions, including expedited transcripts.
4. Prior to the depositions, defendants shall produce to the plaintiff any documents that relate to defendant Chiles's termination.
5. Plaintiff's expert witness, Lindsay Hayes, will be permitted to testify at trial to the facts, opinion, and information contained in his affidavits.

DATED this 15th day of June, 2010.

BY THE COURT:

s/ Joseph F. Bataillon  
Chief District Court Judge